

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4657 of 1983

Date of decision: 29-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMKISHOR SHREECHAND YADAV

Versus

DIRECTOR GENERAL & INSPECTOR GENERAL OF POLICE  
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Appearance:

MR SB NANAVATI for Petitioner

Mr. H. L. Jani for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, an armed constable, working in the motor transport section of the Police Department, has filed this petition challenging therein the order of respondent dated 9-9-1983 annexure-D, reverting him back

to the post of constable. The counsel for the petitioner contended that the petitioner was promoted from the post of armed police constable to that of driver and this reversion has been made without giving him an opportunity of being heard. The petitioner met with accident when he was returning home on motor cycle on 20th July, 1979. It was not the case of any rash and negligent driving, but the petitioner was held responsible for the same. On the strength of the report of the Dy.S.P.M.T. the petitioner was sent back to the post of police constable in Executive Force. Thereafter the petitioner has been taken back in the motor transport section of the Police Department, after the aforesaid reversion. For the alleged accident and the damage to the motor cycle of the Department, the petitioner has been sufficiently punished. This reversion of the petitioner, which is arbitrary, has no relevance whatsoever to the alleged accident. The last contention of the learned counsel for the petitioner is that because of this order the petitioner will be deprived of the special pay which he was getting while working as driver. On the other hand the counsel for the petitioner contended that it is not the case of reversion. The post of driver is not a post of promotion. From the constables in the Department, work of driver is being taken and special pay of Rs.50/- per month is paid. In view of this fact the writ petition is wholly misconceived.

2. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. Having gone through the facts of the case and the submissions made by the learned counsel for the petitioner and the respondents, I do not consider it to be proper to decide the larger issue whether it is a case of promotion of the petitioner from the post of constable to that of driver or not. But the order impugned will certainly cause civil consequences. The petitioner will be deprived of special pay of Rs.50/- /- per month. The petitioner may not have a right to continue as driver. But if the Department wanted to send him back to the executive force on the post of armed police constable, then the special pay will be lost by him. If that is the position it was incumbent upon the respondents to follow the basic principles of natural justice. Learned counsel for the respondents does not dispute the position that in case the order impugned in this special civil application is given effect, the petitioner will be deprived of special pay and it certainly has civil consequences. This court has protected the petitioner by granting stay order, and the stay continues till date. The order dated 9-9-1983 transferring the petitioner to the executive

force from the post of driver cannot be permitted to stand as it has been made in violation of the principles of natural justice.

3. In the result this special civil application succeeds and the same is allowed. The order dated 9/9/1983 (annexure-D) is set aside only on the ground that it has been made in violation of the principles of natural justice. However, setting aside of the order will not come in the way of the respondents to make fresh order if they consider it necessary after following the principles of natural justice. Rule made absolute in the aforesaid terms. No order as to costs.

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